

# Continuing obligations of Cayman Islands mutual funds

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This guide summarises the key continuing obligations of Cayman Islands open-ended regulated funds (known as **mutual funds**<sup>1</sup>) that are established as exempted companies, including the obligations to:

- pay an annual fee to the Cayman Islands Registrar of Companies (the **Registrar**);
- pay an annual fee to the Cayman Islands Monetary Authority (**CIMA**);
- file audited financial statements and a Fund Annual Return Form (**FAR Form**) with CIMA;
- file an annual economic substance notification with the Cayman Islands Tax Information Authority (**TIA**);
- notify the Registrar and CIMA of any change to the fund's directors or officers;
- notify CIMA of any material changes to the information contained in any offering document or the relevant CIMA form containing prescribed particulars for the type of mutual fund in question (**CIMA Form**);
- comply with the Cayman Islands beneficial ownership regime by appointing a contact person for beneficial ownership purposes;<sup>2</sup> and
- comply with CIMA regulatory measures relating to corporate governance, internal controls and retention of records.

## Pay an annual fee to the Registrar

A mutual fund must file an annual return and pay an annual fee to the Registrar. The annual fee is calculated by reference to the fund's authorised share capital. The fund's registered office in the Cayman Islands will file the annual return with the Registrar and when fees are received from the fund, pay the annual fee on the fund's behalf. The fee is due in January of each year. Late fees will be assessed after 31 March of each year.

## Pay an annual fee to CIMA

A mutual fund must pay an annual fee to CIMA. The annual fee is currently US\$4,482 (or US\$3,201 in the case of a registered master fund). The fee is due by 15 January of each year and late fees will be assessed after that date. The registered office will pay the CIMA fees on the fund's behalf when the fees are received from the fund.

## File audited financial statements and FAR Form with CIMA

A mutual fund must have its accounts audited annually and such accounts are required to be signed-off by a Cayman Islands auditor approved by CIMA. The audited accounts and FAR Form must be filed with CIMA within six months of the end of the fund's financial year.

<sup>1</sup> See our guide to [Mutual funds in the Cayman Islands](#) for further details.

<sup>2</sup> See the 'Beneficial ownership' section below. Where the fund does not opt to appoint a contact person for beneficial ownership purposes, it will be required to identify and report certain particulars of its registrable beneficial owners to its corporate services provider.

## **Economic substance notification**

A mutual fund is required to file an economic substance notification with the TIA via the Registrar as a prerequisite to filing its annual return in January of each year. This notification confirms that the mutual fund is an 'investment fund'<sup>3</sup> for the purposes of the Cayman Islands economic substance regime and is the only obligation applicable to a mutual fund under the Cayman Islands economic substance regime.<sup>4</sup>

## **Notify the Registrar and CIMA of any change to the fund's directors or officers**

The Registrar must be notified of any change to the fund's directors or officers. The fund's registered office must file an updated Register of Directors and Officers with the Registrar within 30 days of any change. Late fees will be assessed if the Registrar is not notified within such time.

For regulated funds, other than registered master funds, CIMA must be notified of any change to the fund's directors. An updated CIMA Form and updated offering document must be filed with CIMA within 21 days of the change.

Directors of CIMA-registered fund companies also have annual registration or licensing requirements, depending on their status in each case. Please refer further to our guide on [The Director Registration and Licensing Regime in the Cayman Islands](#) for further information.

## **Notify CIMA of any material changes to the offering document or CIMA Form**

An offering document in respect of equity interests in a mutual fund must describe the equity interests in all material respects, and contain such other information as is necessary to enable a prospective investor in the mutual fund to make an informed decision as to whether or not to subscribe for or purchase the equity interests. Registered master funds are not obliged to have an offering document.

Any material changes to the information contained in the offering document or any changes to the relevant CIMA Form must be filed with CIMA within 21 days of the change.

The following is a non-exhaustive list of material changes requiring notification to CIMA:

- change to any of the offering terms;
- change of registered office or principal office;
- change of trustee;
- change of auditor;
- change of administrator;
- change of investment manager;
- change of broker;
- change of custodian;
- resignation or appointment of a director;
- changes to any of the information contained in the CIMA Form.

## **Beneficial ownership**

Mutual funds registered with CIMA must ensure that they comply with the Cayman Islands beneficial ownership regime. The fund may do so by opting to appoint of a contact person who is responsible for responding to requests for beneficial ownership information received from the competent authority. The contact person must be a licensed fund administrator or another person licensed or registered with CIMA.

If a mutual fund does not opt to appoint such a contact person, the fund is required to identify and report certain particulars of its registrable beneficial owners to its corporate services provider who will use this

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<sup>3</sup> The Guidance on Economic Substance for Geographically Mobile Activities provides that the TIA will regard mutual funds licensed or registered with CIMA under the Mutual Funds Act (as amended) as 'investment funds' for the purposes of the Cayman Islands economic substance regime.

<sup>4</sup> As 'investment fund business' (meaning the business of operating as an 'investment fund') is excluded from the definition of 'relevant activity' for the purposes of the Cayman Islands economic substance regime, mutual funds are exempt from the requirement to file an economic substance return.

information to establish and maintain the beneficial ownership register at the registered office. For more information, see our guide to [The Cayman Islands beneficial ownership regime](#).

## Regulatory measures

Some key regulatory measures<sup>5</sup> issued by CIMA for mutual funds are set out below.

- The Rule on Corporate Governance for Regulated Entities and Statement of Guidance on Corporate Governance for Mutual Funds and Private Funds which require a regulated mutual fund to establish and maintain a corporate governance framework and oblige the fund's governing body to:
  - properly oversee the activities and affairs of the regulated fund and its service providers;
  - adhere to the individual and collective duties prescribed by these corporate governance measures;
  - suitably identify, disclose, monitor and manage all conflicts of interest on an annual basis;
  - appropriately manage and mitigate the fund's risks;
  - hold regular meetings, at least annually; and
  - maintain internal documents which fully record the proceedings of meetings of the governing body and/or other determinations;
- The Rule and Statement of Guidance on Internal Controls for Regulated Entities, which requires the regulated mutual fund's governing body to:
  - ensure that an adequate and effective system of internal control is established, documented and maintained;
  - approve and periodically review the overall business strategies and significant policies of the regulated entity;
  - understand the material risks faced by the regulated entity;
  - approve the organisational structure and ensure that senior management is monitoring the effectiveness of the internal control system; and
  - demonstrate independence from senior management and exercise oversight of the development and performance of internal controls (where this is not reasonably possible, policies and procedures must be in place to identify and manage actual or perceived conflicts of interests); and
- The Statement of Guidance on Nature, Accessibility and Retention of Records which requires a regulated mutual fund to keep, for a minimum period of five years, up-to-date:
  - records of books of accounts and other financial affairs; and
  - records and policies in relation to accounting, organisation, employees, administration, risk management, incorporation, shareholder/board meeting minutes and resolutions, client communication, service providers, customer due diligence and annual returns made to CIMA..

The regulatory measures set out above should be complied with in a manner which is commensurate with the size, complexity, structure, nature of business and risk profile of the fund's operations.

## CIMA's supervisory powers

CIMA has various supervisory powers with respect to regulated mutual funds to ensure their direction and management are conducted in a fit and proper manner and may at any time instruct a mutual fund to have its accounts audited and submitted to CIMA. In addition, CIMA may request the directors, general partner or trustees of a fund to provide CIMA with such information or explanation in respect of the fund as CIMA may reasonably require to enable it to carry out its duties under the Mutual Funds Act (as amended).

If CIMA is satisfied that a regulated fund is (or is likely to become) unable to meet its obligations as they fall due, is carrying on or attempting to carry on business or is winding up its business voluntarily in a manner which is prejudicial to its investors or creditors, or it is a licensed mutual fund which does not comply with any commission of its licence, CIMA may:

- revoke a mutual fund's licence;
- impose conditions or further conditions on a mutual fund's licence;

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<sup>5</sup> <https://www.cima.ky/investment-funds-regulatory-measures>

- require the substitution of any promoter or operator of a mutual fund;
- appoint a person to advise the mutual fund on the proper conduct of its affairs; or
- appoint a person to assume control of the affairs of the mutual fund.

An operator of a mutual fund may be liable on conviction to a fine of US\$121,951 for carrying on business as a mutual fund contrary to the Mutual Funds Act.

In addition, CIMA may impose administrative fines in respect of breaches of certain provisions of the Mutual Funds Act and certain of CIMA's rules. These fines range in amount from US\$6,100 to a maximum of US\$121,955 for individuals and US\$1,219,515 for corporate bodies. Please refer further to our guide on [The Cayman Islands administrative fines regime](#) for further information.

### **Anti-money laundering requirements**

The Cayman Islands anti-money laundering and countering terrorist financing (AML) regime requires mutual funds to maintain AML procedures as appropriate to the size of the fund. The requirements include:

- adoption of a risk-based approach to monitor investors and financial activities, together with adequate systems to identify risk (including checks against all applicable sanctions lists) in relation to persons, countries and activities of the mutual fund;
- procedures for:
  - investor identification and verification
  - risk-management;
  - record-keeping;
  - suspicious activity reporting;
  - monitoring, and testing the systems for, compliance with AML and proliferation financing regulatory requirements; and
- other internal control and communication procedures (eg a risk-based independent audit function).

Mutual funds are also under an obligation to appoint named individuals to act as the anti-money compliance officer (AMLCO), money laundering reporting officer (MLRO) and deputy money laundering reporting officer (DMLRO). The AMLCO and MLRO may be the same individual.

The role of a fund's AMLCO is to oversee the AML compliance function and ensure the effectiveness of the fund's AML systems, its adherence to applicable AML legislation/guidance and the day-to-day operation of the fund's AML policies and procedures. The MLRO is the point of contact for all internal suspicious activity reports and will in turn report suspicious activity to the competent authorities. The DMLRO's role is to discharge the MLRO functions in the absence of the MLRO.

### **Automatic exchange of financial information**

The Cayman Islands has automatic exchange of information regimes in place for reporting under the US Foreign Account Tax Compliance Act (FATCA) and the OECD's common reporting standard (CRS). Cayman Islands vehicles classified as 'Cayman Reporting Financial Institutions' are subject to registration, reporting, due diligence and administrative obligations. In addition to the registration and reporting required:

- each 'Cayman Reporting Financial Institution' under CRS is also required to establish, maintain and implement written policies and procedures, even where the performance of CRS obligations has been delegated to a third party;
- each entity required to register with the TIA must appoint a 'principal point of contact' (PPOC) for the TIA to communicate with and a person authorised to notify the TIA of any changes to the PPOC; and
- each entity registering with the United States' Internal Revenue Service must appoint a 'Responsible Officer' who provides certifications regarding compliance with FATCA.

### **Pay an annual fee to CIMA to register under the Securities Investment Business Act**

If a mutual fund's investment manager is a Cayman Islands entity (or is registered in the Cayman Islands) and carries on securities investment business, the investment manager must be licensed or registered as a 'registered person' under the Securities Investment Business Act (as amended). In order to register as a registered person, a completed application must be submitted to CIMA, via an online portal, together with

the registration fee of US\$6,098 and any other information requested by CIMA. The fee is due by 15 January of each year and late fees will be assessed after that time. Please refer further to our guide on [Registered persons under the Securities Investment Business Act](#) for further information.

## Contacts

A full list of contacts specialising in investment funds law can be found [here](#).